

109TH CONGRESS  
1ST SESSION

# S. 1059

To amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to specify procedures for the conduct of preliminary damage assessments, to direct the Secretary of Homeland Security to vigorously investigate and prosecute instances of fraud, including fraud in the handling and approval of claims for Federal emergency assistance, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 18, 2005

Mr. NELSON of Florida introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to specify procedures for the conduct of preliminary damage assessments, to direct the Secretary of Homeland Security to vigorously investigate and prosecute instances of fraud, including fraud in the handling and approval of claims for Federal emergency assistance, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. FINDINGS AND PURPOSES.**

4       (a) FINDINGS.—Congress finds that—

1           (1) in the aftermath of the 4 hurricanes that  
2           occurred within 6 weeks in the southeast United  
3           States during 2004, many of the inspectors and  
4           managers employed to inspect and document dis-  
5           aster-related damage in that area had criminal  
6           records;

7           (2) preliminary damage assessments provide  
8           important information about the impact and mag-  
9           nitude of damage and the needs of individuals, busi-  
10          nesses, the public sector, and the community as a  
11          whole; and

12          (3) the failure to conduct a preliminary damage  
13          assessment can result in Federal funds being pro-  
14          vided to areas that have not suffered the level of  
15          damage that would qualify an area for Federal dis-  
16          aster assistance.

17          (b) PURPOSES.—The purposes of this Act are—

18               (1) to ensure the appropriate use of public  
19               funds;

20               (2) to protect disaster victims; and

21               (3) to require more stringent background  
22               checks for contractors of the Federal Emergency  
23               Management Agency.

1 **SEC. 2. PRELIMINARY DAMAGE ASSESSMENTS.**

2 Section 401 of the Robert T. Stafford Disaster Relief  
3 and Emergency Assistance Act (42 U.S.C. 5170) is  
4 amended—

5 (1) by striking “All requests for” and inserting  
6 the following:

7 “(a) IN GENERAL.—All requests for”; and

8 (2) by adding at the end the following:

9 “(b) PRELIMINARY DAMAGE ASSESSMENTS.—

10 “(1) DEFINITIONS.—In this subsection:

11 “(A) ASSESSMENT.—The term ‘assess-  
12 ment’ means a preliminary damage assessment  
13 described in paragraph (2)(A).

14 “(B) DIRECTOR.—The term ‘Director’  
15 means the Director of FEMA.

16 “(C) FEMA.—The term ‘FEMA’ means  
17 the Federal Emergency Management Agency.

18 “(D) INCIDENT.—The term ‘incident’  
19 means a condition or occurrence that causes  
20 such damage or hardship as may result in a  
21 Presidential declaration of a major disaster or  
22 emergency.

23 “(E) SECRETARY.—The term ‘Secretary’  
24 means the Secretary of Homeland Security, act-  
25 ing through the Director.

26 “(2) PRELIMINARY DAMAGE ASSESSMENT.—

“(A) PREASSESSMENT BY THE STATE.—

Except as provided in subparagraph (E), on occurrence of an incident, or if a State determines that the occurrence of an incident is imminent, and the State official responsible for disaster operations determines that the State and local governments may lack the capability to adequately respond to the incident, the State shall—

“(i) verify the information of the

State used to make the determination; and

“(ii) request the Regional Director to

perform a joint FEMA-State preliminary damage assessment of the type, extent, and location of any damage caused by the incident.

“(B) DAMAGE ASSESSMENT TEAMS.—Each

State shall appoint a damage assessment team to carry out assessments described in subparagraph (A) that is composed of—

“(i) at least 1 representative of the

Federal Government;

“(ii) a least 1 representative of the

State;

1 “(iii) if practicable, a local govern-  
2 ment representative who is familiar with  
3 the extent and location of damage or po-  
4 tential damage in any applicable commu-  
5 nities; and

6 “(iv) such additional representatives  
7 from Federal and State agencies and vol-  
8 untary relief organizations as are nec-  
9 essary, as determined by the State.

10 “(C) RESPONSIBILITY OF STATE.—A State  
11 shall assume responsibility for—

12 “(i) coordination of State and local  
13 participation in an assessment conducted  
14 under this paragraph; and

15 “(ii) ensuring that participants in the  
16 assessment receive timely notification con-  
17 cerning the schedule of activities for the  
18 assessment.

19 “(D) RESPONSIBILITY OF FEMA.—The  
20 Secretary shall designate an official of  
21 FEMA—

22 “(i) to brief members of the assess-  
23 ment team on—

24 “(I) damage criteria;

1 “(II) the kind of information to  
2 be collected for the particular incident  
3 that is the subject of the assessment;  
4 and

5 “(III) applicable reporting re-  
6 quirements; and

7 “(ii) on completion of the assessment,  
8 to consult with State officials to discuss  
9 findings and reconcile any differences.

10 “(E) WAIVER.—

11 “(i) IN GENERAL.—The State, in con-  
12 sultation with the Regional Director or  
13 FEMA, may elect not to carry out an as-  
14 sessment—

15 “(I) in the case of an incident of  
16 unusual severity and magnitude that  
17 does not require any field damage as-  
18 sessments to determine the need for  
19 supplemental Federal assistance  
20 under this Act; or

21 “(II) in other appropriate cases,  
22 as determined by the State, in con-  
23 sultation with the Regional Director  
24 of FEMA.

1 “(ii) MANAGERIAL RESPONSE.—Noth-  
 2 ing in this subparagraph prevents the con-  
 3 duct of an assessment to determine unmet  
 4 needs for managerial response purposes.”.

5 **SEC. 3. FRAUD.**

6 (a) PENALTIES.—Section 314(d) of the Robert T.  
 7 Stafford Disaster Relief and Emergency Assistance Act  
 8 (42 U.S.C. 5157(d)) is amended by striking “\$5,000” and  
 9 inserting “\$10,000”.

10 (b) FRAUD INVESTIGATIONS.—Section 318 of the  
 11 Robert T. Stafford Disaster Relief and Emergency Assist-  
 12 ance Act (42 U.S.C. 5161) is amended by adding at the  
 13 end the following:

14 “(d) FRAUD INVESTIGATIONS.—

15 “(1) IN GENERAL.—The President shall—

16 “(A) vigorously investigate allegations and  
 17 instances of fraud under this Act, including  
 18 fraud relating to the handling and approval of  
 19 claims for Federal emergency assistance; and

20 “(B) refer to the Attorney General of the  
 21 United States, in accordance with section  
 22 314(c), such allegations, instances, and results  
 23 of investigations described in subparagraph (A)  
 24 as the President determines to be appropriate.

1           “(2) ATTORNEY GENERAL.—The Attorney Gen-  
2       eral of the United States shall—

3           “(A) give serious consideration to any alle-  
4       gations or instances of fraud referred under  
5       paragraph (1)(B);

6           “(B) not later than 10 days after the date  
7       of receipt of such a referral, begin an investiga-  
8       tion into the allegation; and

9           “(C) not later than 45 days after the date  
10      of receipt of the referral, submit to the Sec-  
11      retary of Homeland Security a report describing  
12      the progress and results of the investigation.

13          “(3) FEDERAL EMERGENCY MANAGEMENT  
14      AGENCY.—

15          “(A) PROCEDURES AND GUIDELINES.—  
16      Not later than 120 days after the date of enact-  
17      ment of this subsection, the Director of the  
18      Federal Emergency Management Agency (re-  
19      ferred to in this paragraph as the ‘Director’)  
20      shall—

21           “(i) propose new inspection proce-  
22          dures that more accurately identify dis-  
23          aster-related losses of household items for  
24          which applicants should be compensated;



1 “(ii) modify guidelines relating to in-  
2 dividual and housing inspections to require  
3 inspectors to specify any item that was not  
4 available for inspection;

5 “(iii) develop eligibility criteria for  
6 funding vehicle damage, taking into consid-  
7 eration damage to a vehicle sustained as a  
8 result of a disaster;

9 “(iv) propose new inspection guide-  
10 lines that prohibit inspectors from entering  
11 into a contract with any individual or enti-  
12 ty for whom the inspector performs an in-  
13 spection for purposes of determining eligi-  
14 bility for assistance from the Federal  
15 Emergency Management Agency;

16 “(v) modify guidelines to require con-  
17 tract inspectors to—

18 “(I) document vehicle damage to  
19 allow the Director to justify an award  
20 based on disaster-related need; and

21 “(II) base any funding rec-  
22 ommendation of the contract inspector  
23 for miscellaneous items on disaster-re-  
24 lated need;

1 “(vi) modify guidelines to establish a  
2 reasonable replacement value for destroyed  
3 vehicles, as determined by the Director,  
4 taking into consideration the cost of ac-  
5 quiring a comparable vehicle;

6 “(vii) develop criteria and guidelines  
7 for defining the term ‘disaster-related  
8 death’, including a requirement that an  
9 employee of the Federal Emergency Man-  
10 agement Agency document each request  
11 for funeral expenses assistance in order to  
12 support the approval or disapproval of the  
13 assistance;

14 “(viii) modify home inspection proce-  
15 dures to require contract inspectors to doc-  
16 ument—

17 “(I) any reason why the con-  
18 tractor determined a home was un-  
19 safe; and

20 “(II) any instance of deferred  
21 maintenance, including an evaluation  
22 of the severity of housing conditions;

23 “(ix) modify inspection guidelines for  
24 repair and replacement of homes to require  
25 inspectors to justify a determination that a

1 home is destroyed by identifying and docu-  
2 menting each type of damage sustained by  
3 the home; and

4 “(x) review and modify each inspec-  
5 tion contract to require contractors to—

6 “(I) review the quality of work of  
7 an inspector before submitting inspec-  
8 tion data to the Director;

9 “(II) certify the independence of  
10 the contractor during each inspection;

11 “(III) recuse themselves from  
12 any inspections that present a possible  
13 conflict of interest; and

14 “(IV) consent to a criminal back-  
15 ground check in accordance with sub-  
16 paragraph (B).

17 “(B) REPORT.—Not later than 180 days  
18 after the Director develops procedures and  
19 guidelines under subparagraph (A), the Direc-  
20 tor shall submit to the Committee on Homeland  
21 Security and Governmental Affairs of the Sen-  
22 ate and the Committee on Transportation and  
23 Infrastructure of the House of Representatives  
24 a report that describes any change to the proce-

1           dures and guidelines of the Federal Emergency  
2           Management Agency.

3           “(C) BACKGROUND CHECKS.—The Direc-  
4           tor shall include in any contract with an inspec-  
5           tor the requirements that—

6                   “(i) a background check shall be per-  
7                   formed on the inspector;

8                   “(ii) the results of the background  
9                   check shall be submitted to the Director  
10                  not later than 7 days after the date on  
11                  which the inspector is hired by the Direc-  
12                  tor; and

13                  “(iii) an inspector who has been con-  
14                  victed of criminal misconduct (including  
15                  fraud, robbery, burglary, forgery, and fel-  
16                  ony drug possession) shall not be employed  
17                  by the Federal Emergency Management  
18                  Agency as an inspector.”.

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